

REMARKS

Entry of the above amendments and consideration of the following remarks are respectfully requested. Upon entry of the above amendments, this application will contain claims 1-41 pending and under consideration. Claims 1-19 stand rejected under the judicially created doctrine of obviousness-type double patenting over the claims of Coates et al. (U.S. Patent No. 5,989,289). Claims 20-28 stand rejected under 35 U.S.C. §102(b) over Carter et al. (WO/97/25,945). For the reasons discussed below, Applicants believe that the claimed invention is patentable over the cited art and request reconsideration leading to timely allowance of this application.

Obviousness-Type Double Patenting Rejections

Claims 1-19 were rejected under the judicially created doctrine of obviousness-type double patenting over the claims of Coates et al. (U.S. Patent No. 5,989,289). Applicants' Attorney submits concurrent with this Response a Terminal Disclaimer to disclaim the terminal part of any patent granted on the present application that would extend beyond the expiration date of U.S. Patent No. 5,989,289 and the required statutory fee for filing the Terminal Disclaimer. Accordingly, Applicants believe this rejection is overcome and request withdrawal of these rejections.

Rejections under 35 U.S.C. §102(b)

Claims 20-28 were rejected under 35 U.S.C. §102(b) over Carter et al. (WO/97/25,945). Applicants have amended claim 20 to recite that the superior bone engaging surface is substantially planar. Carter et al. discloses a dowel that is cylindrical. Consequently, the bone engaging surfaces are curved. Applicants believe the rejections over claim 20 and over claims 21-28, which depend either directly or indirectly from claim 20, are overcome. Accordingly, Applicants request withdrawal of these rejections.

Previously Cited References

Applicants request that the Examiner consider the references submitted in this case on June 11, 2001, and acknowledge his consideration by initialing the citation form 1449 (modified) submitted with the references and returning a copy of the initialed form to undersigned attorney.

Conclusion

In view of the foregoing remarks, Applicants respectfully submit that the cited references, either singly, or in combination, do not disclose or make obvious the claimed invention. Accordingly, reexamination leading to withdraw of all the outstanding rejections and passage of this application containing claims 1-41 are respectfully requested. Additionally, the Examiner is invited to telephone the undersigned attorney if there are any questions about this submission or other matters, which may be addressed in that fashion.

Respectfully submitted,

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VERSION WITH MARKINGS TO
SHOW CHANGES

In the Claims

20. (Amended) A bone graft for insertion between adjacent vertebrae, said graft comprising a cortical bone slice from a long bone, said cortical bone slice comprising:

a substantially planar superior bone engaging surface;
an opposite inferior bone engaging surface; and
a wall provided between the superior bone engaging surface and the inferior bone engaging surface, said wall comprising an anterior wall portion having a convexly curved exterior surface, and an opposite posterior wall portion, wherein the graft comprises a first set of migration resistant surface features comprising grooves, teeth, blades or a combination thereof.

24. (Amended) The graft of claim 20 comprising a second set of migration resistant surface features.